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FIRST GENERAL COUNSEL'S REPORT

MUR: 6102

DATE COMPLAINT FILED: Oct. 22, 2008

DATE OF NOTIFICATIONS: Oct. 28, 2008

June 8, 2009

LAST RESPONSE RECEIVED: June 23, 2009

DATE ACTIVATED: March 11, 2009

EXPIRATION OF SOL: July 1 – Dec. 1, 2013

COMPLAINANT:

Shane M. Saunders

RESPONDENTS:

Georgianna Oliver

Oliver for Congress and Clayton E. Woodrum, in
his official capacity as Treasurer
EverGreen Solutions, Inc.

RELEVANT STATUTES
AND REGULATIONS:

2 U.S.C. § 434(b)

2 U.S.C. § 441b(a)

11 C.F.R. § 100.33(a)

11 C.F.R. § 104.3(d)

11 C.F.R. § 104.11(a)

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

Internal Revenue Service

U.S. House of Representatives Committee on
Standards of Official Conduct

I. **INTRODUCTION**

This matter involves \$441,548.62 loaned by Georgianna Oliver to her authorized committee in connection with her 2008 campaign for the First District of Oklahoma House seat. The complaint alleges that at least \$260,000 of the loans were improper because the money was neither "personal funds" as defined in the Commission's regulations nor funds loaned by a bank. The complaint cites to several news articles stating that Oliver had obtained some of the money

1 for her loans from a business she owns, EverGreen Solutions, Inc. The complaint also alleges
2 that Oliver failed to disclose in her disclosure reports the source of the loans and failed to
3 adequately disclose the purpose of disbursements.

4 Oliver, her authorized committee, Oliver for Congress and Clayton E. Woodrum, in his
5 official capacity as Treasurer, and EverGreen Solutions (collectively "respondents"), filed
6 separate responses stating that (1) Oliver's loans to her committee were made with personal
7 funds obtained from the candidate's salary as Director of EverGreen Solutions, distributions from
8 the IRA accounts listed in her House Financial Disclosure Statement, and distributions made to
9 her as sole shareholder of EverGreen Solutions pursuant to its Bylaws; (2) the FEC reports
10 properly disclosed information about the loans; and (3) the disbursement descriptions were
11 adequate. Although respondents submitted sworn responses, they did not provide copies of
12 EverGreen's Bylaws or other information demonstrating that the EverGreen distribution was
13 proper.

14 Based on the complaint, the responses, and publicly available information, we
15 recommend that the Commission find reason to believe that EverGreen Solutions violated
16 2 U.S.C. § 441b(a) of the Federal Election Campaign Act of 1971, as amended (the "Act") by
17 making, and Oliver and Oliver for Congress violated 2 U.S.C. § 441b(a) by knowingly accepting,
18 prohibited corporate contributions and authorize an investigation to obtain the information that
19 will permit the Commission to make a fully informed decision. We further recommend that the
20 Commission take no action at this time regarding the allegation that the committee violated
21 2 U.S.C. § 434(b) and 11 C.F.R. §§ 104.3(d) and 104.11(a) by failing to disclose the source of
22 the loans in its FEC disclosure reports, as that determination can only be made after investigating
23 the first allegation. Finally, we recommend that the Commission dismiss the allegation that the

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1 committee violated 2 U.S.C. § 434(b)(5) by failing to properly describe the purpose of
2 disbursements, as a matter of prosecutorial discretion.

3 **II. FACTUAL AND LEGAL ANALYSIS**

4 **A. Facts**

5 **1. Oliver's Loans to Her Committee**

6 Georgianna Oliver, a 2008 candidate in Oklahoma's First Congressional District, filed her
7 Statement of Candidacy on June 10, 2008. Between July and November 2008, Oliver made the
8 following loans to her authorized committee:

LOAN DATE	AMOUNT
07/11/08	\$51,000.00
07/17/08	\$15,000.00
08/18/08	\$11,000.00
08/29/08	\$3,540.42
09/19/08	\$260,000.00
09/25/08	\$25,000.00
09/30/08	\$4,600.00
09/30/08	\$2,100.00
10/15/08	\$50,000.00
10/17/08	\$6,000.00
11/03/08	\$2,720.37
11/04/08	\$1,613.70
11/04/08	\$2,500.00
11/07/08	\$4,800.00
11/10/08	\$2,662.96
11/24/08	\$106.50
11/24/08	\$1,000.00
11/24/08	\$2,000.00
11/24/08	\$504.66
TOTAL	\$441,548.62

9 The Committee's October 2008 Quarterly and 12-Day Pre-General Reports disclosed that Oliver
10 made the loans but did not specify whether the loans were made from personal funds.

11 The complaint alleges that the loans Oliver made derived from assets to which she did not
12 have a legal right at the time she became a candidate, and thus were not from personal funds.

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1 Specifically, the complaint cites to news articles to allege that approximately half the total
2 amount she loaned to her committee came from the sale of AptBudget, a business that the
3 candidate did not list as an asset in her August 2008 House of Representatives Financial
4 Disclosure Statement ("House Financial Statement"). Because Oliver was required to list all
5 assets in the House Financial Statement, the complaint states that she did not have any legal right
6 or title to AptBudget at the time of candidacy. Thus, the complaint states that by using funds
7 from this asset, she made at least one prohibited loan totaling \$260,000. The news articles
8 attached to the complaint link AptBudget to Oliver's closely held corporation, EverGreen
9 Solutions. See Complaint at 2 and Exh. A.

10 In a sworn response, Oliver asserts that the funds used to loan money to her committee
11 came from (1) IRA accounts valued on her House Financial Statement from \$1,001-\$15,000; (2)
12 distributions made to her as sole shareholder of EverGreen Solutions, in accordance with the
13 Bylaws; and (3) salary from EverGreen Solutions, disclosed as \$423,914 for 2007 and \$193,419
14 through August 16, 2008. See Oliver Response; Oliver Committee Response; EverGreen
15 Solutions Response; House Financial Statement. In a news report attached to the complaint,
16 however, Oliver stated that EverGreen's sale of AptBudget "helped" her to take a cash
17 distribution from EverGreen. See Jim Myers, *Congressional Hopeful Clarifies Finances*, TULSA
18 WORLD, Oct. 17, 2008, at A13.

19 2. EverGreen Solutions and the Sale of AptBudget

20 Oliver is the director and sole shareholder of EverGreen Solutions, an S corporation
21 incorporated in the District of Columbia with \$1 million to \$5 million in assets. See Oliver
22 Response; EverGreen Solutions Response; House Financial Statement at 3. Oliver also is the
23 sole member of the EverGreen Board of Directors and, according to the Committee, may

1 withdraw funds from EverGreen at her discretion. See EverGreen Articles of Incorporation;
2 Oliver Committee Response.

3 EverGreen Solutions is a real estate industry consulting company with a Tulsa-based
4 technical division that specializes in asset and property management software. See Kirby Lee
5 Davis, *Tulsa-Based EverGreen Solutions Division Enjoys Solid Growth*, OKLA. JOURN. REC.,
6 July 9, 2008. EverGreen's first proprietary software release was AptBudget, a budgeting and
7 forecasting module intended for use by on-site property managers. See Judy Feldman,
8 *EverGreen Solutions Launches MF-Oriented Web-Based Budget Tool*, COMMERCIAL PROP.
9 NEWS, March 20, 2008, available at [https://secure.vnuemedia.com/cpn/content_display/business-
11 management/management-strategies/e3j86dc46267c8082a2176e481ab90e19ac](https://secure.vnuemedia.com/cpn/content_display/business-
10 management/management-strategies/e3j86dc46267c8082a2176e481ab90e19ac). Although
12 EverGreen Solutions released AptBudget in March 2008, in July 2008, the program was in its
13 beta-testing stage and had not been priced. See Davis, *supra*; see also Press Release, *EverGreen
14 Solutions Launches Multifamily Industry's First Web-Based Budget Tool*, at
15 <http://www.evergreen-solutions.net> (March 17, 2008); AptBudget Website, at
<http://www.aptbudget.com> (last visited May 19, 2009).

16 In September 2008, shortly before Oliver loaned \$260,000 to her committee, EverGreen
17 Solutions sold AptBudget to RealPage, Inc., a Texas-based property management software
18 company, for \$400,000. See Jim Myers, *Hopeful Defends Herself in Funds Flap*, TULSA WORLD,
19 Oct. 23, 2008, at A9. Although Oliver reportedly first indicated that funds from this sale of
20 AptBudget, drawn from EverGreen Solutions as sole owner, were a significant part of the
21 \$260,000 loan to her campaign, she later clarified that:

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- 1 • AptBudget¹ owed debt to EverGreen Solutions (*i.e.*, EverGreen held the debt as an
2 account receivable).
- 3
- 4 • Proceeds from the sale of AptBudget to RealPage went toward the amount owed to
5 EverGreen Solutions, although the amount of the receivable held by EverGreen Solutions
6 exceeded the sale price.
- 7 • Following the sale of AptBudget and the payment of its debt, EverGreen Solutions paid a
8 cash distribution to her as sole shareholder pursuant to its Bylaws.

9 **See Oliver Response; EverGreen Solutions Response; see also Jim Myers, *Congressional***
10 ***Hopeful Clarifies Finances*, TULSA WORLD, Oct. 17, 2008, at A13. EverGreen Solutions and**
11 **Oliver did not, however, explain why the distribution was proper or provide a copy of the**
12 **Bylaws, nor is such information publicly available.**

13 **B. Oliver's "Loans" May Have Been Prohibited Corporate Contributions**

14 **Candidates may make unlimited expenditures from personal funds. 11 C.F.R. § 110.10.**
15 **"Personal funds" are defined at 11 C.F.R. § 100.33(a) as including "[a]mounts derived from any**
16 **asset that, under applicable State law, at the time the individual became a candidate, the**
17 **candidate had legal right of access to or control over, and with respect to which the candidate had**
18 **(1) legal and rightful title; or (2) an equitable interest." Corporations are prohibited from making**
19 **a contribution in connection with any federal election, and candidates are prohibited from**
20 **knowingly accepting or receiving such contributions. 2 U.S.C. § 441b(a).**

¹ The precise relationship between EverGreen Solutions and AptBudget is unclear. Although some press reports characterize AptBudget as a proprietary software program designed by EverGreen Solutions, at the time she filed her House Financial Statement, Oliver disclosed that she was the President of AptBudget, LLC, an Oklahoma limited liability company. See House Financial Statement at 4. Oliver, however, did not disclose assets for this entity, later asserting that the valuation of EverGreen Solutions included the value of AptBudget's assets by virtue of the debt AptBudget owed to EverGreen. See Oliver Response; cf. Jim Myers, *Congressional Hopeful Clarifies Finances*, TULSA WORLD, Oct. 17, 2008, at A13 (reporting that Oliver explained she did not list AptBudget as an asset in her House Financial Statement because AptBudget had no value in August 2008). In addition, the responses portray AptBudget as a "related entity" to EverGreen Solutions. See Committee Response and House Financial Statement at 4. Regardless of whether AptBudget was a software program held by EverGreen Solutions as intellectual property or a separate entity that owed debt held by EverGreen Solutions as an account receivable, the legal issues raised by Oliver's loans are the same.

1 Although the complaint alleges that the funds used by Oliver came from the sale of
2 AptBudget, the available information indicates that AptBudget owed a debt to EverGreen, and
3 that the proceeds from the sale of AptBudget paid the debt owed to EverGreen. *See* Oliver
4 Response; Oliver Committee Response; *see also* Jim Myers, *Congressional Hopeful Clarifies*
5 *Finances*, TULSA WORLD, Oct. 17, 2008, at A13. Accounts receivable are considered assets, *see*,
6 *e.g.*, *Auerbach v. Frank*, 685 A.2d 404, 405 (D.C. 1996), so the debt AptBudget owed EverGreen
7 was EverGreen's asset. In turn, EverGreen appears to be Oliver's asset, so the monies
8 EverGreen conveyed to Oliver from the sale of AptBudget could be monies derived from that
9 asset, *i.e.*, personal funds, if the conveyance was proper. If the conveyance was not proper,
10 however, the funds may have remained corporate funds. Thus, the complaint raises the issue
11 whether Oliver improperly used EverGreen corporate funds to make loans to her committee, in
12 violation of the prohibition against corporate contributions. *See* 2 U.S.C. § 441b(a).

13 The key issue is whether the money Oliver withdrew from EverGreen became her
14 personal funds. Although Oliver is the sole owner and shareholder of EverGreen, a District of
15 Columbia S corporation, the funds of an S corporation are corporate in nature until they are
16 properly distributed. *See United States v. Falcone*, 934 F.2d 1528, 1547-48 (11th Cir. 1991),
17 *reh'g granted and opinion vacated on other grounds*, 939 F.2d 1455 (11th Cir. 1991), *opinion*
18 *reinstated on reh'g on other grounds*, 960 F.2d 988 (11th Cir. 1992) (applying Florida law)
19 (“[A]lthough the shareholders of a subchapter S corporation report, pay taxes on, and take
20 deductions for a pro rata share of the corporation's income and losses on their personal tax
21 returns, the corporation retains its income until the board of directors, in its discretion, declares a
22 dividend.”). D.C. law provides that a corporation's board of directors authorizes dividends and
23 distributions. *See* D.C. Business Corporation Act § 29-101.40 (“The board of directors of a
24 corporation may declare and the corporation may pay dividends on its outstanding shares in cash,

10044261568

1 property, or its own shares ... subject to the following provisions.”). Such provisions include
2 that dividends may not be paid contrary to any provision in the articles of incorporation or that
3 would cause the corporation to become insolvent. *See* 29-101.40(1) and (6). *See generally* 11
4 Fletcher Cyclopedia of the Law of Corporations § 5349 (2008) (“Unless otherwise provided by
5 agreement, the authority to declare dividends, whether payable in cash, property or shares, is
6 solely vested in the board of directors, and not in the shareholders nor in the corporate officers.”).

7 Oliver states in her response that the EverGreen distributions were made to her in
8 accordance with the Bylaws. We have been unable to assess whether, in fact, the distribution
9 was proper because the respondents did not provide a copy of the Bylaws or corporate minutes
10 showing that the EverGreen board “declared” a dividend or distribution. Although Oliver is the
11 only member of the board, *see* EverGreen Articles of Incorporation, such information is required
12 to assess whether the funds were corporate or personal. *Compare* MUR 5283/5285 (Forrester),
13 First General Counsel’s Report at 16-17 and Certification dated Feb. 20, 2003 (Commission
14 found no reason to believe that the candidate had made loans to his committee with corporate
15 funds based on detailed information from the candidate regarding how he paid personal income
16 tax on his subchapter S corporation’s earnings and how the board of directors authorized certain
17 distributions to him and other shareholders), *with* MUR 3191 (Friends of Bill Zeliff)
18 (Commission found reason to believe that the candidate used corporate funds to make loans to
19 his committee where the candidate’s draw on equity of a subchapter S corporation in which he
20 was a shareholder had the effect of a loan), *and* MUR 3119 (Chandler for Congress)
21 (Commission found reason to believe that money used to make loans to candidate’s campaign
22 was corporate where the candidate conceded in her response that she borrowed money from her
23 subchapter S corporation and would have to repay it, such that funds retained their corporate
24 nature and never became personal funds). *See also* MUR 5655 (Rick Renzi) (Audit referred

10044261569

1 finding, and Commission found reason to believe, that candidate's subchapter S corporation
2 made prohibited contributions where the loans were made by checks drawn on corporate
3 accounts, deposited into the candidate's personal bank account, and transferred to his
4 committee's bank account; none of the checks drawn by the corporations to the candidate
5 indicated that they were distributions of income to the candidate; and documents did not support
6 representation that the candidate's sale of his interest in one S corporation was the source of
7 funds for some of the loans to his committee. The subsequent investigation revealed that the
8 distributions had been properly made where the committee provided additional supporting
9 documentation and the candidate amended his tax returns to show that the funds received from
10 his S corporations were loan repayments and thus personal funds; the Commission took no
11 further action).

12 Here, although Oliver, EverGreen Solutions, and the committee's responses are under
13 oath, the responses lack critical details regarding the distribution of EverGreen's funds. Thus, we
14 recommend that the Commission find reason to believe that EverGreen Solutions made, and
15 Oliver and Oliver for Congress knowingly accepted, prohibited corporate contributions in
16 violation of 2 U.S.C. § 441b(a).

17 **C. Failure to Report Source of Funds**

18 The complaint also alleges that the committee failed to report the source of the loans
19 made by the candidate. In the FEC disclosure reports, the committee disclosed that Oliver made
20 loans to her committee, but the reports do not disclose whether the loans came from personal
21 funds or a bank loan. Based on the above analysis regarding the source of the candidate's funds,
22 it is unclear what the committee's reporting obligations would be. Thus, we recommend that the
23 Commission take no action at this time regarding the allegation that the committee violated

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1 2 U.S.C. § 434(b)(3)(E) and 11 C.F.R. §§ 104.3(d) and 104.11(a) by failing to report the source
2 of the candidate's loans.

3 **D. Failure to Disclose Purpose of Disbursements**

4 Finally, the complaint alleges that the committee failed to adequately disclose the purpose
5 of disbursements. The complaint does not cite to any particular disbursement entry, but attaches
6 five pages of Schedule B itemized disbursements from the Oliver Committee's Pre-General
7 Report, listing descriptions including "salary & reimbursements," "campaign signs," "survey and
8 consulting fees," "tv ads," "reimbursements," "salary," "stamps," and "ca[t]ering for fundraiser."
9 See Complaint Exh. D. Of these, one entry for \$840 labeled as "reimbursements" included an
10 inadequate purpose and should have stated that it was a reimbursement for travel expenses. See
11 Oliver Committee Response; *see also* Examples of Inadequate Purposes, at
12 http://www.fec.gov/law/policy/purposeofdisbursement/inadequate_purpose_list_3507.pdf
13 (March 5, 2007). Based upon the minimal amount at issue, we recommend that the Commission
14 dismiss the allegation that the committee violated 2 U.S.C. § 434(b)(5) by failing to adequately
15 report the purpose of disbursements as a matter of prosecutorial discretion. *See Heckler v.*
16 *Chaney*, 470 U.S. 821, 831 (1985).

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IV. RECOMMENDATIONS

1. Find reason to believe that Georgianna Oliver and Oliver for Congress and Clayton E. Woodrum, in his official capacity as Treasurer, knowingly accepted prohibited corporate contributions, in violation of 2 U.S.C. § 441b(a).
2. Find reason to believe that EverGreen Solutions, Inc. made prohibited corporate contributions, in violation of 2 U.S.C. § 441b(a).
3. Take no action at this time as to the allegation that Oliver for Congress and Clayton E. Woodrum, in his official capacity as Treasurer, violated 2 U.S.C. § 434(b)(3)(E) and 11 C.F.R §§ 104.3(d) and 104.11(a).
4. Dismiss the allegation that Oliver for Congress and Clayton E. Woodrum, in his official capacity as Treasurer, violated 2 U.S.C. § 434(b)(5).
5. Approve the attached Factual and Legal Analyses.
6. _____
7. Approve the appropriate letters.

Thomasenia P. Duncan
General Counsel

6/30/09

Date

BY:



Stephen Gura
Deputy Associate General Counsel for
Enforcement



Julie McConnell
Assistant General Counsel



Elena Paoli
Attorney
